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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/719,492 | 11/21/2003 | Brad Arnold Goodwin | GBB-200-A | 2529 |

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| EXAMINER |
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DOOLEY, JAMES C

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| ART UNIT | PAPER NUMBER |
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3634

DATE MAILED: 12/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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|------------------------------|------------------------|--|----------------------|--|
| Office Action Summary | Application No. | | Applicant(s) | |
| | 10/719,492 | | GOODWIN, BRAD ARNOLD | |
| | Examiner | | Art Unit | |
| | James C. Dooley | | 3634 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2,4,6,8-12 and 21-23 is/are pending in the application.
- 4a) Of the above claim(s) 13-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2,4,6,8-12 and 21-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. <u>attached hereto</u> |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>8/17/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This office action is filed in response to amendment filed 11/10/2005 wherein claims 2 and 9 were amended; claims 1, 3, 5, 7 were canceled, and new claims 21-23 were introduced.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 2,4,6,8-12, 21-23 drawn to a portable jig, classified in class 211, subclass 189.
- II. Claim 13-20, drawn to a drying rack, classified in class 118, subclass 108.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions having different modes of operation.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Irving Weiner on 12/7/2005 a provisional election was made without traverse to prosecute the invention of the portable jig, claims 2,4,6,8-12,21-23. Affirmation of this election must be made by applicant in replying to this Office action. Claims 13-20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 9-12, 21, and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant functional claims the leg members supporting an external object, claim 9 line 6. A positively claimed element cannot be linked to functionally recited element. (see also claims 10,21 and 22)

Claims 11 and 12 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Use of "and/or" is improper claim language.

The term "conveniently" in claims 11 and 12 is a relative term which renders the claim indefinite. The term "disassembled conveniently" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Stoetzel (US 250,997). Stoetzel discloses a portable adjustable jig featuring:

- a. A substantially rectangular frame
- b. A pivot means (seen as projection between ends i, i²)
- c. A stabilizing means (opposite complementing projection between i, i²)
- d. A pair of side members (A, A')
- e. A pair of cross members (H, H')
- f. Adjustment and squaring means (holes J together with bolt I, I')
- g. A pair of disassemblable leg assemblies (D, D')
- h. A pair of angle supports (E)
- i. A pair of cross-leg members (a)
- j. Securement means at the topmost rails of the legs (b)

Stoetzel teaches means for transporting a coffin whereas Applicant teaches a means for painting doors. The reference is analogous since it discloses every limitation recited in the claims. Applicant is referred to MPEP 2131.05 wherein it is stated:

The question of whether a reference is analogous art is not relevant to whether that reference anticipates. A reference may be directed to an entirely different problem than the one addressed by the inventor, or may be from an entirely different field of endeavor than that of the claimed invention, yet the reference is still anticipatory if it explicitly or inherently discloses every limitation recited in the claims.

The rectangular frame structure is seen as comprising side elements (A,A') and cross elements (H,H'). The predetermined clearance between the workpiece and the frame is seen to be dependent from the size and shape of the workpiece.

The pivot means is seen as the center protrusion on cross member H. Stoetzel does not specifically disclose this protrusion to be a pivot means, or to have any specific function. It is clear that this protrusion would be capable of performing the function of a pivot means. Applicant is referred to *In re Schoenwald*, wherein it has been decided, "No utility need be disclosed for a reference to be anticipatory..." (22USPQ2d 1673)

The stabilizing means is seen as the complementary pivot point. It is clear that the complementary pivot would stabilize a workpiece in a horizontal orientation.

Stoetzel discloses that both crossbars (H, H') are releasable from the side members (A,A') and both are capable of moving (line 82-83).

The adjustable squaring mechanism disclosed by Stoetzel is seen as the combination of elements (I, I') and alignment holes (J). By releasing the bolts (I), the cross bars (H, H') can moved and realigned parallel to each at a different location while remaining perpendicular to side members (A).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6,8,9-12, 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stoetzel alone. Stoetzel teaches a portable jig with all the features described above. The legs disclosed by Stoetzel are not orthogonally affixed to the frame. To have an orthogonal arrangement the brace (E) would need to be shortened.

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Applicant has not disclosed any surprising results favored by the orthogonal arrangement. Accordingly, it would have been obvious to one with ordinary skill in the art at the time of the invention to modify the legs of Stoetzel to be perpendicular to the frame. The motivation to keep the legs directly under the frame would be to prevent a person from tripping over the legs..

Comments

It is clear from the figures of Stoetzel that an elongated object such as a pipe or tube would pivot without hindrance on the described pivot point. It is also clear that an elongated workpiece with a significant width, such as a door, would not be able to pivot due to obstruction from cross bars B² and B³. Applicant should note that disclosing the workpiece to be doors having a significant width relative to the length would not overcome the prior art rejection. Applicant is referred to MPEP §2144.04 (IIA), where it is stated, "Omission of an element and its function is obvious if the function of the element is not desired." Therefore, if Applicant does not desire the additional stability provided by crossbars, it would be obvious to omit those elements.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. Peter (US 3,095,833). Peter teaches all the claimed features lacking only angle brackets connecting the leg assembly
- b. Brown (US 2,177,169). Brown teaches all the claimed features lacking only a clearly defined pivot means.

- c. Wagstaff (US 2,084,661). In Wagstaff the rods can be interpreted as adjustably squaring side and cross members. The rods are also pivot means.
- d. Staley (US 2,333,450). Staley teaches an elongated workpiece 25 pivotable in a frame, having adjustable cross members, and disassemblable legs.
- e. James (US 4,235,005) James teaches all the claimed features lacking only releasably connected frame members.
- f. Creech (US 5,694,881). Creech teaches an alternate interpretation of a pivot means.

Response to Arguments

The indicated allowability of claims 2,4,6,8 is withdrawn in view of the newly discovered reference(s) to Stoetzel (US 250,997).

Applicant's arguments with respect to claims 9-12 have been considered but are moot in view of the new ground(s) of rejection. The new grounds of rejection were necessitated by the amendment adding:

- g. Claim 2 lines 1-10 "for an elongated... being worked upon".
- h. Claim 9 line 3, "rigidly and permanently", "orthogonally".


The indicated allowability of claims 2,4,6,8 is withdrawn in view of the newly discovered reference(s) to Stoetzel (US 250,997).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James C. Dooley whose telephone number is 571-2721679. The examiner can normally be reached on M-F 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jennifer E. Novosad
Primary Examiner
Art Unit 3634

12/15/2005